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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
SECRETARY

In the Matter of)

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

REPLY COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), hereby files its reply comments in response to comments and oppositions filed concerning petitions for reconsideration of the Commission's Second Report and Order ("Order"), FCC 96-424, released on October 31, 1996 in the above-referenced proceeding. WorldCom submits that the record does not support the Commission's adoption of an across-the-board mandatory detariffing policy. Nonetheless, should the Commission refuse to revisit its conclusions, WorldCom strongly supports in the alternative the targeted exceptions to mandatory detariffing outlined in AT&T's petition.

I. INTRODUCTION

In its initial and reply comments in this proceeding, WorldCom supported the FCC's exercise of its forbearance authority to alter the Section 203 tariffing requirement so that nondominant interexchange carriers ("IXCs") may choose not to file tariffs for their domestic interstate, interexchange services.¹ However, WorldCom urged the Commission not to overlook the many public interest benefits of allowing carriers to file tariffs, including giving carriers the

¹ See Comments of LDDS WorldCom, CC Docket No. 96-61, filed April 25, 1996 ("WorldCom Comments"); Reply Comments of LDDS WorldCom, CC Docket No. 96-61, filed May 24, 1996 ("WorldCom Reply Comments").

necessary flexibility to utilize contracts where customers prefer to use individually-negotiated agreements, and tariffs where customers favor uniform service arrangements. WorldCom also strongly opposed the Commission's proposal to impose mandatory detariffing on carriers because: (1) the Commission lacks statutory authority to forbid tariff filings; (2) mandatory detariffing is not supported by proper application of the three-part statutory test; (3) mandatory detariffing represents bad public policy because (among other reasons) the contracting process cannot adequately cover casual callers and other consumers who cannot or will not use contracts.

Despite the fact that most commenters favored either permissive detariffing or no relaxation of the tariffing requirement at all, the Commission concluded in the Second Report and Order that it possessed adequate legal authority and record evidence to forbid IXC's from filing tariffs for their interstate, domestic interexchange services.² As a result, the Commission ordered all nondominant IXC's to cancel their domestic tariffs within 9 months from the effective date of the order.³ In response, eleven parties filed petitions for reconsideration of the Second Report and Order, while numerous parties have also filed court appeals.⁴

II. THE COMMISSION LACKS A PROPER LEGAL AND RECORD BASIS FOR ADOPTING AN ACROSS-THE-BOARD MANDATORY DETARIFFING POLICY

WorldCom agrees wholeheartedly with Frontier's argument that the Commission has overreached its statutory authority, and failed to adequately justify its decision, by adopting

² Second Report and Order at para. 3.

³ Id.

⁴ WorldCom has intervened in the pending court appeals of the FCC's Order.

a mandatory detariffing policy.⁵ As Frontier explains, the Commission improperly has overstated the supposed benefits of mandatory detariffing, and understated the costs.⁶ In particular, as WorldCom demonstrated in its initial comments in this proceeding, the availability of a tariff option gives carriers the flexibility they need to use individually-negotiated agreements in some instances, and uniform tariffed arrangements in others.⁷

Other parties share their concerns about the Commission's mandatory detariffing policy as well. The Telecommunications Resellers Association ("TRA"), in its petition for reconsideration, notes that its own opposition to mandatory detariffing comports with the record evidence presented by the vast majority of commenters.⁸ The Competitive Telecommunications Association ("CompTel") filed comments urging the Commission to adopt permissive detariffing, rather than mandatory detariffing.⁹ SBC also argues that the Commission should adopt permissive detariffing, and agrees with Telco that the implied-in-fact contract doctrine is insufficient to protect carriers in the absence of a valid tariff.¹⁰ US West also asks the Commission to allow IXC's to file tariffs "until the Commission has examined further the full

⁵ Petition for Reconsideration of Frontier Corporation, CC Docket No. 96-61, filed December 20, 1996 ("Frontier Petition").

⁶ Frontier Petition at 2-9.

⁷ WorldCom Comments at 10, 14.

⁸ Petition for Reconsideration/Clarification of the Telecommunications Resellers Association, CC Docket No. 96-45, filed December 23, 1996, at 9 ("TRA Petition").

⁹ Comments of CompTel, CC Docket No. 96-61, filed January 28, 1997, at 3 ("CompTel Recon. Comments").

¹⁰ Comments of SBC Communications, CC Docket No. 96-61, filed January 28, 1997, at 6 ("SBC Recon. Comments").

implications of what mandatory detariffing entails."¹¹ Thus, based on the overwhelming record evidence, including the petitions and comments supporting reconsideration, WorldCom believes the Commission has little choice but to revisit its earlier decision and replace its mandatory detariffing regime with a permissive detariffing regime.

III. AT MINIMUM, THE COMMISSION MUST ALLOW CARRIERS TO UTILIZE TARIFFS FOR CASUAL CALLERS AND NEW CUSTOMERS

Nonetheless, should the Commission ultimately decide -- incorrectly -- to compel IXC's to withdraw their federal tariffs, the Commission should still allow carriers to utilize tariffs in discrete situations. AT&T, while noting that it supports replacing mandatory detariffing in its entirety with permissive detariffing, seeks only limited reconsideration and clarification in this proceeding.¹² AT&T asks the Commission to allow IXC's to maintain permissive tariffs in two situations: (1) for the first 45 days of service to new customers, and (2) for non-presubscribed (casual) calls.¹³ Telco also filed its own petition urging the Commission to permit casual calling services to be tariffed by carriers on a voluntary basis.¹⁴

It is notable that, of the many dozens of parties that filed comments in the original proceeding, no party filed an opposition to these aspects of AT&T's petition. On the other

¹¹ Comments of US West, Inc., CC Docket No. 96-61, filed January 28, 1997, at 5-6 ("US West Recon. Comments").

¹² AT&T Corp. Petition for Limited Reconsideration and Clarification, CC Docket No. 96-61, filed December 23, 1996, at 9 ("AT&T Petition").

¹³ AT&T Petition at 9.

¹⁴ Petition for Reconsideration of Telco Communications Group, Inc., CC Docket No. 96-61, filed December 23, 1996, at 4-6 ("Telco Petition").

hand, CompTel and Sprint each filed comments supporting, at minimum, adoption of AT&T's limited proposals to allow IXC's to tariff new services, and those intended for casual callers.¹⁵ SBC also submitted comments agreeing with AT&T that permissively filed tariffs should be allowed for casual customers and new customers.¹⁶ Even the broadcast networks -- traditionally staunch supporters of mandatory detariffing -- state that they do not oppose a permissive detariffing policy limited to residential subscribers and casual callers because mandatory detariffing "reasonably could be limited to the services provided to business customers."¹⁷

WorldCom agrees wholeheartedly with the limited proposals advocated in AT&T's petition, and by those parties filing comments in support of AT&T. For consumers unable or unwilling to establish a one-to-one contractual relationship with an IXC (such as casual callers), a tariff offers both carriers and customers the same degree of legal protection as a contract, but without the added unnecessary and wasteful transaction costs of individual negotiation. It is obviously not practical for an IXC to negotiate and agree to a signed contract on the spot with numerous unidentifiable customers who may access its services at any time from any place, simply by dialing an access code. Nor does it make sense to deny IXC's the ability to establish a legal relationship with a newly-presubscribed customer prior to commencement of service. As AT&T puts it well, "tariffs are the only certain mechanism to ensure that carriers' reasonable

¹⁵ CompTel Recon. Comments at 9-10; Comments of Sprint Corporation, CC Docket No. 96-61, filed January 28, 1997, at 2-6 ("Sprint Recon. Comments").

¹⁶ SBC Recon. Comments at 3-4.

¹⁷ Comments of ABC, Inc., CBS, Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. on Petitions for Reconsideration, CC Docket No. 96-61, filed January 28, 1997, at 5 ("Networks Recon. Comments").

commercial expectations are protected without resort to frequent and costly litigation."¹⁸ WorldCom would add that tariffs are also vital to help carriers fulfill the consumer's expectation and right to prompt and efficient telecommunications service. Indeed, a carrier's ability to provide low-cost and timely services to its customers -- particularly casual callers and residential customers -- may be adversely affected by the forced abandonment of mass market tariffs in exchange for the unwieldy legal device of individual contracts. WorldCom urges the Commission to adopt AT&T's limited but necessary proposals to allow IXC's to utilize tariffs for new customers and casual callers.

In a related vein, TRA also asks the FCC to consider allowing nondominant IXC's to utilize a limited, carrier-administered electronic tariff filing system to alleviate the adverse impact of mandatory detariffing on carriers and customers alike.¹⁹ WorldCom believes that such a filing system would relieve the Commission of its duties as repository of tariffs, while at the same time allowing IXC's to provide services to their customers without undue delay or administrative burdens. Whether or not the FCC decides to adopt permissive detariffing, or the limited changes requested by AT&T and others, TRA's proposal merits serious consideration.

IV. THE COMMISSION MUST CLARIFY THAT STATE LAW DOES NOT, AND CANNOT, GOVERN INTERSTATE TELECOMMUNICATIONS SERVICES

WorldCom also supports AT&T's request that the Commission clarify its statements about the applicability of state contract and consumer protection law.²⁰ It is obvious

¹⁸ AT&T Petition at 12.

¹⁹ TRA Petition at 14-16.

²⁰ AT&T Petition at 17-20.

that the Commission should not -- and cannot -- authorize state law challenges to interstate rates, terms, and conditions under the Communications Act. Sprint agrees that clarification is necessary to ensure that state courts, applying state law, cannot wrongly assume jurisdiction to determine the lawfulness of a carrier's rates, terms, and conditions for its interstate services.²¹ Even US West, while acknowledging in its comments that it has a "preference for deregulation and market freedom wherever possible," nonetheless admits that "AT&T appears to have a point."²² US West submits that the Commission's decision to leave the contractual relationships between interstate carriers and their customers in the hands of state legal principles is contrary to the Communications Act and unwise, and should be revoked.²³ WorldCom agrees.

²¹ Sprint Recon. Comments at 6-7.


²² US West Recon. Comments at 3.

²³ US West Recon. Comments at 3-6.

V. CONCLUSION

The Commission should act in accordance with the recommendations proposed above by WorldCom.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. R. Sloan", written over a horizontal line.

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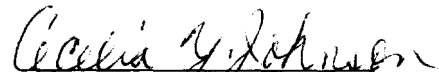
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